

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:* Taxpayers represented by Stokes Bartholomew )  
Evans & Petree ) Shelby County  
See Attached List of Property Identifications )  
Tax Year 2000 )

INITIAL DECISION AND ORDER

Statement of the Case

On August 28, 2001, Gregory W. Moody, Administrator of Appraisal Operations for the Shelby County Assessor of Property ("Assessor"), mailed to the respective owners of the subject properties a copy of a sworn COMPLAINT FOR BACK ASSESSMENT/REASSESSMENT. Each of these complaints requested the Assessor to "conduct a back assessment/reassessment hearing" due to the discovery of "new construction by permit" on the premises. The "current" values shown on the above complaints for the parcels in question were as follows:<sup>1</sup>

| Parcel No. | Appraised Value | Assessed Value |
|------------|-----------------|----------------|
| 33-42-2C   | \$ 396,500      | \$ 158,600     |
| 57-2-34    | \$ 560,300      | \$ 140,075     |
| 72-72-33   | \$ 311,900      | \$ 124,760     |
| 73-6-69    | \$13,378,700    | \$5,351,480    |
| 80-18-1    | \$ 558,100      | \$ 139,525     |
| 80-25-C56  | \$ 806,700      | \$ 201,675     |
| 81-53-54   | \$ 2,745,800    | \$1,098,320    |
| 88-40F-4   | \$ 219,000      | \$ 87,600      |
| 93-200-420 | \$ 9,840,400    | \$3,936,160    |
| 93-400-563 | \$ 7,344,200    | \$0 (exempt)   |
| 93-500-491 | \$ 6,471,600    | \$2,588,640    |
| 93-700-468 | \$ 604,300      | \$ 241,720     |
| D2-14-531  | \$ 914,900      | \$ 365,960     |
| D2-42V-F36 | \$ 550,100      | \$ 137,525     |
| G2-20-397  | \$ 1,825,500    | \$ 730,200     |
| G2-30-178  | \$ 1,143,200    | \$ 285,800     |
| G2-32-429  | \$ 1,782,100    | \$ 712,840     |

<sup>1</sup>With the exception of Parcel No. G2-30-178, the values shown are identical to those originally certified by the Assessor for tax year 2000. The original appraised and assessed values for that parcel were \$898,500 and \$224,625, respectively.



That same day, Mr. Moody issued a "citation" which directed each property owner to appear before him on October 9, 2001 for a hearing "to show cause, if any why the property should not be back assessed or reassessed at its value as required by law."

The scheduled back assessment/reassessment hearing was not held. But on October 11, 2001, the State Board of Equalization ("State Board") received appeals on behalf of the respective property owners contending that the complaint for back assessment/reassessment "violates Tenn. Code Ann. 67-1-1001 et seq., 67-5-1411 and 67-5-1511." The appellants filed a motion for summary judgment on July 24, 2002.

After hearing oral argument, the undersigned administrative judge entered an ORDER DENYING MOTION FOR SUMMARY JUDGMENT on January 17, 2003. Upon interlocutory review, the State Board affirmed that ruling in an ORDER ON RECONSIDERATION dated October 21, 2003.<sup>2</sup> Copies of these orders are attached and hereby incorporated by reference.

On June 25, 2007, the administrative judge entered a notice of hearing with respect to the valuation of the subject properties. At the (rescheduled) hearing on August 29, 2007 in Memphis, the taxpayers were represented by David C. Scruggs, Esq., of Evans & Petree, PC (Memphis). Assistant Shelby County Attorney Thomas Williams appeared on the Assessor's behalf.

The parties' representatives agreed on the record that Parcel No. 72-72-33 should be appraised and assessed at \$15,100 and \$6,040, respectively.

#### Findings of Fact and Conclusions of Law

For purposes of the motion for summary judgment only, the parties had stipulated that the Assessor's "current" valuation of each property in question (as shown on the complaint for back assessment/reassessment) was accurate. In this remand on the merits, the taxpayers' attorney adduced no evidence to the contrary; in fact, he did not call any witnesses. Rather, Mr. Scruggs argued that "the back assessment(s) should be dismissed because the hearing scheduled for October 9, 2001 was canceled and never rescheduled and the back assessment was never completed." Taxpayers' Memorandum In Support Of Appeal, p. 1. In support of this position, he submitted a recent decision of Administrative Judge Mark J. Minsky in ER Johnson Rd Hotel/Inv. LLC (Shelby County, Tax Year 2000, Initial Decision and Order, June 26, 2007).<sup>3</sup>

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<sup>2</sup>The State Board's earlier ORDER ON INTERLOCUTORY REVIEW (dated July 1, 2003) had stated that "the decision of the administrative judge is affirmed and this matter is rereferred for further proceedings as appropriate." *Id.* at p. 4. The administrative judge will treat the absence of any specific direction of remand in the ORDER ON RECONSIDERATION as an inadvertent omission.

<sup>3</sup>Although the Assessor did not appeal Judge Minsky's initial order in the ER Johnson case to the Assessment Appeals Commission, she has petitioned for judicial review of its final decision in the Chancery Court of Shelby County.



Thus the taxpayers are beseeching the State Board to set aside back assessments/reassessments which, in their view, have not even been consummated.

At issue in the factually identical ER Johnson case, where the Assessor was represented by John Zelinka, Esq., was a citation for back assessment/reassessment of a newly-built hotel.<sup>4</sup> Like the appellants in these proceedings, counsel for the taxpayer cited Lemm Services, Inc. (Shelby County, Tax Year 1996, Final Decision and Order, April 19, 2000) for the proposition that “the back assessment should be dismissed because the hearing scheduled for October 9, 2001 was canceled and never rescheduled.” ER Johnson, *supra*, p. 1. *Without meaningful opposition from the Assessor’s representative in that proceeding*, Judge Minsky granted the taxpayer’s motion to “dismiss” the back assessment/reassessment on the ground that it was “properly initiated” but “never completed.” *Id.* at p. 2. He noted in his decision that “[t]he appeal was effectively held in abeyance pending resolution of ongoing litigation.” *Id.* at p. 1. Yet, apparently, neither party informed Judge Minsky of the nature of that “litigation” – or the State Board’s denial of these taxpayers’ motion for summary judgment.<sup>5</sup>

While the State Board may not have explicitly rejected the theory espoused in ER Johnson in its ORDER ON RECONSIDERATION, the affirmed ORDER DENYING MOTION FOR SUMMARY JUDGMENT did address the argument revived by the appellants here as follows:

...[H]aving invoked the jurisdiction of the State Board at this stage, the taxpayers cannot legitimately maintain that the Assessor violated the law “by failing to have a hearing and failing to send the Taxpayers notice of back assessment.”...**Indeed, the law in effect at the time of the Assessor’s complaints for back assessment/reassessment (Tenn. Code Ann. section 67-1-1005(d)) did not even specifically require the Assessor to conduct an administrative hearing.**

*Id.* at pp. 5—6. [Emphasis added.]

It is highly doubtful whether Judge Minsky would have ruled in the taxpayer’s favor in ER Johnson had he been apprised of the State Board’s interlocutory order in these parallel cases.

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<sup>4</sup>As in the instant cases, the Assessor’s office alternatively attempted to pick up the omitted improvement via a “correction of error” under Tenn. Code Ann. section 67-5-509. But the Assessor has not relied on that statute in defense of the “current” values of the subject properties; and nothing in the record suggests that the Assessor “abandoned the back assessment proceedings” (Response To Assessor’s Memorandum, p. 1) – especially after prevailing on the taxpayers’ motion for summary judgment.

<sup>5</sup>Given the multitude of complaints filed with the State Board in the course of a year, one cannot fairly assume that the administrative judges assigned to the agency are aware of any particular decision unless it is called to their attention. The ER Johnson appeal was one of dozens involving commonly-represented taxpayers that Judge Minsky had docketed for June 6, 2007 in Memphis. That case had previously been set for hearing before the undersigned administrative judge on November 29, 2006. On that occasion, the taxpayer’s agent (Jerry R. Caruthers, of Caruthers & Associates, Inc.) acknowledged that ER Johnson was indistinguishable from the instant appeals. At his suggestion, the administrative judge granted a continuance pending the final outcome of this protracted dispute. For whatever reason, neither party apparently asked Judge Minsky to defer consideration of the ER Johnson case on that rationale.



In any event, the undersigned administrative judge stands by the quoted opinion. The applicable law cited therein provided (in relevant part) that “[a]ny person aggrieved by any back assessment or reassessment (initiated by the Assessor) may appeal directly to the state board of equalization within forty-five (45) days from receipt of the citation or notice of back assessment or reassessment....” Some six years after exercising the very right of administrative appeal *before an impartial tribunal* afforded by the Tennessee General Assembly, the taxpayers have offered no proof that any of the parcels in question (as improved) have been overvalued. Instead, in effect, the appellants insist that these properties must remain drastically undervalued because the Assessor – though plainly empowered to “make” back assessments or reassessments – did not stage a hearing *before a subordinate appointed by her*. Taxpayers’ Memorandum In Support of Appeal, Exhibit A, p. 3. Neither Lemm Services, *supra*, nor any other binding precedent of which the administrative judge is aware, compels such an anomalous result.

#### Order

It is, therefore, ORDERED that the following values be adopted for tax year 2000:

| Parcel No. | Appraised Value | Assessed Value |
|------------|-----------------|----------------|
| 33-42-2C   | \$ 396,500      | \$ 158,600     |
| 57-2-34    | \$ 560,300      | \$ 140,075     |
| 72-72-33   | \$ 15,100       | \$ 6,040       |
| 73-6-69    | \$13,378,700    | \$5,351,480    |
| 80-18-1    | \$ 558,100      | \$ 139,525     |
| 80-25-C56  | \$ 806,700      | \$ 201,675     |
| 81-53-54   | \$ 2,745,800    | \$1,098,320    |
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| 93-200-420 | \$ 9,840,400    | \$3,936,160    |
| 93-400-563 | \$ 7,344,200    | \$0 (exempt)   |
| 93-500-491 | \$ 6,471,600    | \$2,588,640    |
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| D2-42V-F36 | \$ 550,100      | \$ 137,525     |
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| G2-30-178  | \$ 1,143,200    | \$ 285,800     |
| G2-32-429  | \$ 1,782,100    | \$ 712,840     |

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:



1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5<sup>th</sup> day of December, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: David C. Scruggs, Attorney, Evans & Petree PC  
Assistant Shelby County Attorney Thomas Williams  
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

PROPERTY IDENTIFICATION ATTACHMENT  
FOR INITIAL DECISION AND ORDER  
Taxpayers represented by Evans & Petree  
Tax Year 2000

| <i>Property Owner</i>                   | <i>Property Identification</i> | <i>Property Address</i> |
|---|--------------------------------|-------------------------|
| National Bank of Commerce               | D02-014-531                    | 1136 Germantown         |
| Martin & Herring Gill                   | 081-053-054                    | Quince Road             |
| Lenox Park Building C, LLC              | 093-200-420                    | 3150 Lenox Park         |
| STS Properties (PSO)                    | 088-040F-004                   | 5256 Elmore Road        |
| *Industrial Dev Board (City of Memphis) | 093-400-563                    | 4550 Mendenhall         |
| Michael A. Lightman                     | 093-500-491                    | 7051 Malco Crossing     |
| First Tennessee Bank National Assoc.    | 093-700-468                    | 7080 E. Shelby Drive    |
| First Tennessee Bank National Assoc.    | 073-006-069                    | 3451 Prescott           |
| Jack Erb Co., Inc.                      | D02-042V-F036                  | 3254 Pointe Hill        |
| Wolf River Retail Center LLC            | G02-020-397                    | 7910 Wolf River Parkway |
| Phillip H. & Mabel M. McNeill           | 080-025-C056                   | 218 Cloister Green Lane |
| Mark J. Halperin                        | 080-018-001                    | 1370 W. Massey          |
| Sam C. Gary                             | 057-002-034                    | 4208 Tuckahoe           |
| Union Planters National Bank            | 072-072-033                    | 2631 Frayser Blvd.      |
| James L. Reid                           | 033-042-002C                   | 2605 Summer             |
| BIC – MTS Partners                      | G02-032-429                    | 9325 Highway 72         |
| John McEadden                           | G02-030-178                    | 2820 Germantown         |

\*Property also appealed by Assessor of Property



TENNESSEE STATE BOARD OF EQUALIZATION  
BEFORE THE ADMINISTRATIVE JUDGE

|               |   |   |               |
|---------------|---|---|---------------|
| <i>In Re:</i> | Taxpayers represented by Stokes Bartholomew   | ) |               |
|               | Evans & Petree                                | ) | Shelby County |
|               | See Attached List of Property Identifications | ) |               |
|               | Tax Year 2000                                 | ) |               |

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

**Background.** Usually, the issuance of an official certificate by the State Board of Equalization (the "State Board") marks the end of a dispute between a taxpayer and an assessor of property. Between the combatants in this protracted struggle, however, the official certificate itself has fueled a fiery debate.

In March and May of 2001, the Shelby County Assessor of Property (the "Assessor") filed appeals with the State Board from decisions of the Shelby County Board of Equalization (the "county board") to "roll forward" values it had established for certain parcels during its 1999 session to tax year 2000. In an initial order dated August 14, 2001, Administrative Judge Mark J. Minsky granted the taxpayers' motion to dismiss those appeals on the ground that they were untimely. Though Judge Minsky explicitly held that the State Board lacked jurisdiction, his order recited that the properties in question "are to be valued in accordance with the Shelby County Board of Equalization's decision letters of September 18, 2000." In re Various Alleged Late-filed Real Property Appeals Filed by Shelby County Assessor of Property (Shelby County, Tax Year 2000), pp. 9-10. Since neither party took exception to that order, it ripened into an official certificate of the State Board's Assessment Appeals Commission. Attached to the certificate, dated October 29, 2001, was a list of the affected parcels and their values (as determined by the county board). No judicial review of the State Board's action was sought.

The 17 parcels under appeal in this proceeding were among those involved in the case before Judge Minsky. Two weeks after the entry of his initial order of dismissal, the Assessor's administrator of appraisal operations mailed a sworn COMPLAINT FOR BACK ASSESSMENT/REASSESSMENT to the owners of the subject properties. Each complaint requested the Assessor to "conduct a back assessment/reassessment hearing" due to the discovery of "new construction by permit" on the premises.

These direct appeals on behalf of the respective property owners were received by the State Board on October 11, 2001. On each of the appeal forms, attorney Andrew H. Raines claimed that the attempted back assessment/reassessment "violates Tenn. Code Ann. sections 67-1-1001 *et seq.*, 67-5-1411 and 67-5-1511." Subsequently, on July 24, 2002, counsel for the taxpayers filed a MOTION FOR SUMMARY JUDGMENT which was predicated on this theory – "continuously, strenuously and inexhaustibly" opposed by Mr. Williams. REPLY TO TAXPAYER'S RESPONSE TO ASSESSOR'S MOTIONS, p. 2. In an amendment to their motion filed on August 27, 2002, the taxpayers also contended that there was "no proper basis"



for the attempted back assessment/reassessment; and that the Assessor had failed to comply with the "proper procedure" for back assessment/reassessment.

On January 9, 2003, the undersigned administrative judge heard oral argument on the taxpayers' motion for summary judgment (as amended) in Memphis.<sup>1</sup> The taxpayers were represented at the hearing by attorneys David C. Scruggs and A. Kent Gieselmann, of Stokes Bartholomew Evans & Petree, P.A. Assistant Shelby County Attorney Thomas E. Williams appeared on behalf of the Assessor.

**Stipulations.** As stated in the PRE-HEARING CONFERENCE ORDER dated August 26, 2002, the parties have stipulated **for purposes of ruling on the motion for summary judgment only** that: (1) each appellant actually received the aforementioned COMPLAINT FOR BACK ASSESSMENT/REASSESSMENT; and (2) the "current value" shown on each such complaint (representing the Assessor's valuation of the identified property) is accurate. Also undisputed are two additional facts asserted in the amendment to the taxpayers' motion for summary judgment: (1) that the Assessor originally valued all but one of the parcels in question at the very same amount claimed on the complaint for back assessment/reassessment; and (2) that the taxpayers paid the real estate taxes based on the original (certified) values.<sup>2</sup>

**Criteria for Review.** The proponent of a motion for summary judgment must establish that: (1) there is no genuine issue as to any material fact; and (2) the movant is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56. As explained by the Tennessee Supreme Court in Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993):

...[t]he trial court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. Then, if there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied. The court is not to "weigh" the evidence when evaluating a motion for summary judgment. The court is simply to overrule the motion where a genuine dispute exists as to any material fact.

847 S.W.2d at 210-11.

**Applicable Law.** Tenn. Code Ann. section 67-5-1411 provides that "[w]hen the county board of equalization shall have determined the matters before it, such action shall be final except insofar as the same may be revised or changed by the state board of equalization." According to Tenn. Code Ann. section 67-5-1511(a):

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<sup>1</sup>At the hearing, Mr. Williams withdrew the motion and "counter-claim" which he had filed on the Assessor's behalf on March 12, 2002.

<sup>2</sup>Following the issuance of the official certificate of the Assessment Appeals Commission, each taxpayer received a partial refund of the amount paid from the collecting official.



The action of the state board of equalization shall be final and conclusive **as to all matters passed upon by the board**, subject to judicial review, and taxes shall be collected upon the assessments determined and fixed by the board. [Emphasis added.]

Tenn. Code Ann. section 67-1-1002(a) requires a back assessment or reassessment of property:

- (1) When the same shall have been omitted from or escaped taxation;
- (2) When the same have been assessed by the assessor or computed by the board of equalization, at less than actual cash value by reason of any fraud, deception, misrepresentation, misstatement, or omission of full statements of the owner of the property or the owner's agent or attorney; or
- (3) When the owner of the property connives at or fraudulently procures or induces an assessment to be made by the assessor or computed by the board of equalization at less than its actual cash value; provided, that in all cases where there is a grossly inadequate assessment, fraud shall be presumed.

A *back assessment* is defined by Tenn. Code Ann. section 67-1-1001(a)(1) as "the assessment of property, **including land or improvements not identified or included in the valuation of the property**, which has been omitted from or totally escaped taxation." [Emphasis added.] Except in the event of fraud or non-reporting by the taxpayer, a back assessment or reassessment must be **initiated** by September 1 of the year following the tax year for which the original assessment was made. Tenn. Code Ann. section 67-1-1005(a). A back assessment or reassessment is initiated by filing with the Assessor's office a sworn complaint which identifies the property in question and states its basis. Tenn. Code Ann. section 67-1-1005(b)(1).

In Shelby County, the Assessor is empowered to make back assessments or reassessments of property. Tenn. Code Ann. section 67-1-1005(d)(1). Tenn. Code Ann. section 67-1-1005(d)(4) provides (in relevant part) that "[a]ny person aggrieved by any back assessment or reassessment (initiated by the Assessor) may appeal directly to the state board of equalization within forty-five (45) days from receipt of the citation or notice of back assessment or reassessment...."

**Analysis.** In effect, the appellants contend that a taxpayer is immune from a back assessment or reassessment of property if the State Board has issued an official certificate relating to the assessment of such property for the tax year in question. Respectfully, the administrative judge finds no support for this view in Tenn. Code Ann. sections 67-1-1001 *et seq.* Indeed, the very references in Tenn. Code Ann. sections 67-1-1002(a) to values "computed by the board of equalization" contemplate the possibility of a back assessment or reassessment after a board of equalization has taken final action on a complaint. As the Tennessee Attorney General has observed:

Once the process for assessing and classifying property for tax purposes is complete and finalized for any given year, then



this assessment and/or classification is binding **unless proper grounds exist to issue a back assessment or reassessment as provided in T.C.A. section 67-1-1005.** [Emphasis added.]

Tenn. Atty. Gen. Op. 92-62 (October 8, 1992), p. 6. In ruling on the taxpayers' motion for summary judgment, of course, the administrative judge must assume that the "new construction" referred to in the Assessor's complaints for back assessment/reassessment actually occurred.

That Judge Minsky's initial order and the ensuing official certificate even listed the values rolled forward by the county board was, in retrospect, probably unfortunate. But the text of his opinion leaves no doubt that Judge Minsky never addressed the merits of the Assessor's claim that the properties in question had been undervalued because of omitted improvements. Rather, as indicated on the certificate, the Assessor's appeals were "dismissed" for lack of jurisdiction. The State Board never "passed upon" the accuracy of the disputed values, or the validity of a back assessment or reassessment of the affected parcels.<sup>3</sup> Nor, by not seeking review of the dismissal, did the Assessor relinquish any other power or remedy independent of her right of appeal to the State Board under Tenn. Code Ann. section 67-5-1412(d).

The appellants express concern that rejection of their position would enable the Assessor to circumvent the results of the appeals process. "In this case," the taxpayers insist, "the fact that the Assessor did not seek to initiate a back assessment during the appeals process precludes her from doing so now." MOTION FOR SUMMARY JUDGMENT, p. 5. Yet nothing in Tenn. Code Ann. sections 67-1-1001 *et seq.* suggests that the Assessor's power or duty to make a back assessment or reassessment is extinguished by the dismissal of an untimely appeal that was intended to accomplish the same objective. To be sure, an assessing officer should not be permitted to retry a case concerning the valuation of property **which has been assessed** under the guise of a back assessment or reassessment proceeding. But the mere possibility that an assessor might overreach his or her statutory authority hardly justifies deprivation of that authority.

There is remarkable ingenuity in the argument that, because the taxpayers paid taxes on the amounts of the original assessments, "[t]he Assessor cannot now be heard to allege that these parcels were omitted from taxation or totally escaped taxation." BRIEF IN SUPPORT OF AMENDMENT TO MOTION FOR SUMMARY JUDGMENT, p. 3. But when existing

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<sup>3</sup>In a June 14, 2001 ORDER RECONVENING HEARING ON TAXPAYERS' MOTION TO DISMISS, Judge Minsky had advised the parties to be prepared to address, *inter alia*, the following issues:

14. Whether the assessor could simply initiate back assessments in lieu of appeals to the State Board of Equalization when new improvements escaped taxation; and
15. Whether the assessor could simply initiate reassessments in lieu of appeals to the State Board of Equalization in the event a property owner failed to submit the cost of materials referred to in Tenn. Code Ann. section 67-5-603(b)(5).

Appropriately, given the basis of his decision, Judge Minsky expressed no opinion on either of the above issues in his initial order.



improvements are "not...included in the valuation of the property" as determined by the **county board** upon review, such improvements surely escape taxation no less than if they had been omitted from the certified assessment roll. Hence the administrative judge finds no irregularity in the purported basis for the back assessments/reassessments (i.e., "new construction by permit"). As discussed above, the fact that the Assessor's action may have been prompted by the dismissal of her prior appeals to the State Board (for lack of jurisdiction) is of no consequence.

The appellants' procedural attack on the back assessments/reassessments reflects a misapprehension of the holding in the Appeal of Lemm Services, Inc. (Shelby County, Final Decision and Order, April 19, 2000). In that case, the Assessor appealed an initial order of the undersigned administrative judge which invalidated a back assessment/reassessment of tangible personal property on the grounds that the citation was not sworn and did not adequately explain its basis. The Assessment Appeals Commission affirmed that ruling, reasoning as follows:

The general law contemplates that proceedings for back assessment are to take place before the county board of equalization after initiation by the assessor or by any number of other officials or even by individual taxpayers. [Citation omitted.] Back assessments in such cases are initiated by the filing of a sworn written complaint in the assessor's office identifying the property and stating the basis of the back assessment. A second paragraph provides that back assessments in counties exceeding 700,000 in population (including Shelby) are to be made by the assessor. The complaint procedure is not specified for the large counties as it is for the smaller, but presumably we should imply the same procedures in all counties in the interest of uniformity, **to the extent the explicit terms of the statute do not require otherwise.** {Emphasis added.}

*Id.* at p. 2.

As read by the taxpayers, the Lemm decision means that the Assessor -- like the assessor of every other county -- must file a complaint for back assessment/reassessment with the county board; and that only after the county board has heard the matter would the Assessor send notice of its decision to the taxpayer. BRIEF IN SUPPORT OF AMENDMENT TO MOTION FOR SUMMARY JUDGMENT, pp. 3-5. This interpretation would obliterate the distinction that the legislature manifestly intended in authorizing the assessor of larger counties (i.e., those having a population of over 700,000) to "make" back assessments or reassessments. Such power would be of little avail if the Assessor were required to refer all back assessment/reassessment complaints to the county board, as in the smaller counties. Surely the "citation or notice" that is appealable "directly" to the State Board under Tenn. Code Ann. section 67-1-1005(d)(4) denotes action taken by the Assessor -- not the county board.

Finally, having invoked the jurisdiction of the State Board at this stage, the taxpayers cannot legitimately maintain that the Assessor violated the law "by failing to have a hearing and failing to send the Taxpayers notice of back assessment." BRIEF IN SUPPORT OF AMENDMENT TO MOTION FOR SUMMARY JUDGMENT, p. 5. Indeed, the law in effect at the time of the Assessor's complaints for back assessment/reassessment (Tenn. Code Ann. section 67-1-1005(d)) did not even specifically require the Assessor to conduct an administrative



hearing. By issuing those complaints, the Assessor undoubtedly "initiated" back assessments/reassessments of the subject properties (within the meaning of Tenn. Code Ann. section 67-1-1005(a)) prior to the September 1, 2001 deadline.

For the reasons set forth above, the appellants' motion for summary judgment is respectfully denied.

ENTERED this 17<sup>th</sup> day of January, 2003.



PETE LOESCH  
ADMINISTRATIVE JUDGE

cc: David C. Scruggs, Esq., Stokes Bartholomew Evans & Petree  
Thomas E. Williams, Assistant County Attorney  
Tameaka Riley, Appeals Manager, Shelby County Assessor's Office  
Rita Clark, Assessor of Property

EVANSSUMMARY.DOC



*Taxpayers represented by  
Stokes Bartholomew Evans & Petree  
Tax Year 2000*

| <i>Property Owner</i>                  | <i>Parcel Identification</i> | <i>Property Address</i> |
|--|------------------------------|-------------------------|
| National Bank of Commerce              | D02-014-531                  | 1136 Germantown         |
| Martin & Herring Gill                  | 081-053-054                  | Quince Road             |
| Lenox Park Building C, LLC             | 093-200-420                  | 3150 Lenox Park         |
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| Jack Erb Co., Inc.                     | D02-042V-F036                | 3254 Pointe Hill        |
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| Phillip H. & Mabel M. McNeill          | 080-025-C056                 | 218 Cloister Green Lane |
| Mark J. Halperin                       | 080-018-001                  | 1370 W. Massey          |
| Sam C. Gary                            | 057-002-034                  | 4208 Tuckahoe           |
| Union Planters National Bank           | 072-072-033                  | 2631 Frayser Blvd.      |
| James L. Reid                          | 033-042-002C                 | 2605 Summer             |
| BIC – MTS Partners                     | G02-032-429                  | 9325 Highway 72         |
| John McEadden                          | G02-030-178                  | 2820 Germantown         |



BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

|                                 |   |               |
|---------------------------------|---|---------------|
| Appeal of:                      | ) |               |
|                                 | ) |               |
| VARIOUS BACK ASSESSED TAXPAYERS | ) | Shelby County |
| (List attached)                 | ) |               |
| Tax Year 2000                   | ) |               |

ORDER ON RECONSIDERATION

Upon reconsideration of our Order on Interlocutory Review entered July 1, 2003, the Board restates that order as follows: Based on the written briefs and the arguments of counsel presented at the hearing on May 5, 2003, the Board is unpersuaded that the taxpayers are entitled as a matter of law to the requested summary judgment relief.

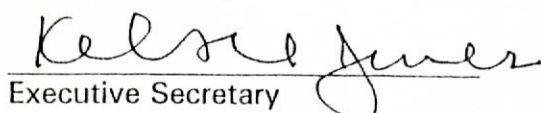
Neither party contested the facts of the case for purposes of the motion for summary judgment, and the order of the administrative judge denying the taxpayers' request for summary judgment addressed three points of law. That order: 1) rejected the taxpayers' argument that issuance by the State Board of its final assessment certificate relative to a property, precludes back assessment of the property by the assessor in a separate, subsequent proceeding; 2) rejected the taxpayers' argument that the assessor followed an incorrect procedure in the back assessment of taxpayers' property by failing to file a complaint for back assessment with the Shelby County Board of Equalization, and 3) rejected the taxpayers' argument that improvements could not be back assessed as omitted property if they were the subject of an original assessment, under the circumstances of this case in which the county board inadvertently deleted the improvements from the original assessments.

The taxpayers have failed to persuade the Board that the administrative judge's order on these points was in error. It is accordingly ORDERED, that the order of the administrative judge is affirmed and the taxpayers' motion for summary judgment is denied.

Dated: Oct. 21, 2003

  
Presiding Member

ATTEST:

  
Executive Secretary



cc: Mr. David Scruggs, Esq.  
Mr. Thomas Williams, Assistant County Attorney



*Taxpayers represented by  
Stokes Bartholomew Evans & Petree  
Tax Year 2000*

| <i>Property Owner</i>                  | <i>Parcel Identification</i> | <i>Property Address</i> |
|--|------------------------------|-------------------------|
| National Bank of Commerce              | D02-014-531                  | 1136 Germantown         |
| Martin & Herring Gill                  | 081-053-054                  | Quince Road             |
| Lenox Park Building C, LLC             | 093-200-420                  | 3150 Lenox Park         |
| STS Properties (PSO)                   | 088-040F-004                 | 5256 Elmore Road        |
| Industrial Dev Board (City of Memphis) | 093-400-563                  | 4550 Mendenhall         |
| Michael A. Lightman                    | 093-500-491                  | 7051 Malco Crossing     |
| First Tennessee Bank National Assoc.   | 093-700-468                  | 7080 E. Shelby Drive    |
| First Tennessee Bank National Assoc.   | 073-006-069                  | 3451 Prescott           |
| Jack Erb Co., Inc.                     | D02-042V-F036                | 3254 Pointe Hill        |
| Wolf River Retail Center LLC           | G02-020-397                  | 7910 Wolf River Parkway |
| Phillip H. & Mabel M. McNeill          | 080-025-C056                 | 218 Cloister Green Lane |
| Mark J. Halperin                       | 080-018-001                  | 1370 W. Massey          |
| Sam C. Gary                            | 057-002-034                  | 4208 Tuckahoe           |
| Union Planters National Bank           | 072-072-033                  | 2631 Frayser Blvd.      |
| James L. Reid                          | 033-042-002C                 | 2605 Summer             |
| BIC – MTS Partners                     | G02-032-429                  | 9325 Highway 72         |
| John McEadden                          | G02-030-178                  | 2820 Germantown         |